

Appl. No 10/733,620
 Atty. Docket No. AA-610
 Amdt. dated February 21, 2006
 Reply to Office Action of December 19, 2005
 Customer No. 27752

REMARKS

Claim Status

Claims 1, 2 and 9-14 are pending.

Applicants appreciate and acknowledge the mention by the Examiner that claims 4 and 8 are allowable.

Rejection Under 35 USC §102

Claims 1, 3, 5 and 7 have been rejected under 35 USC §102(b) as being anticipated by Sauer '428.

Applicants traverse the rejections in view of the following remarks.

It is well-settled that in order to anticipate a claim, the reference must teach each and every element of the claim. MPEP §2131. "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." MPEP §2131 citing *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987).

For the sake of clarity, Figures 2-5 illustrating an embodiment of Applicant's claimed invention are depicted below.

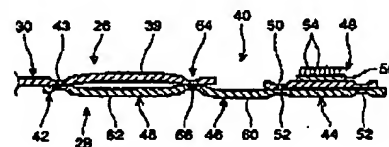
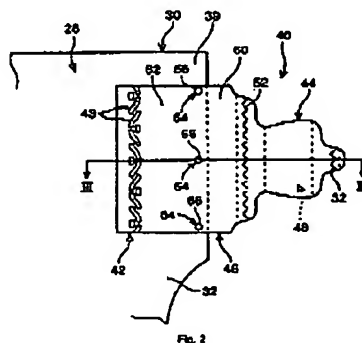


Fig. 3

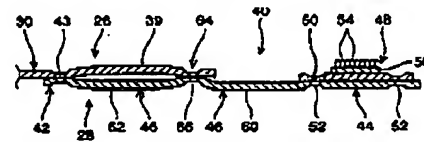


Fig. 4

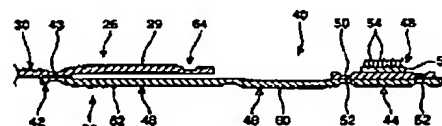


Fig. 5

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As can be seen in Figs. 2-5, a stretchable panel 46 comprises a first stretchable zone 60 and a second stretchable zone 62. The present application discloses that "[t]he first stretchable zone 60 is capable of providing extensibility upon an initially applied extension force generated by pulling the stretchable fastening member 40. However, extensibility of the second stretchable zone 62 is restricted by a restriction means 64 until the restriction means 64 is inactivated. Therefore, the only first stretchable zone 60 provides extensibility upon an initially applied extension force and the extensibility of the second stretchable zone 62 is preserved until the restriction means 64 is inactivated." (See *inter alia* page 8, lines 27-33)

In sharp contrast the fastening means 36 including an expansion member 46 disclosed in Sauer is shown in Figures 2 and 3 depicted below.

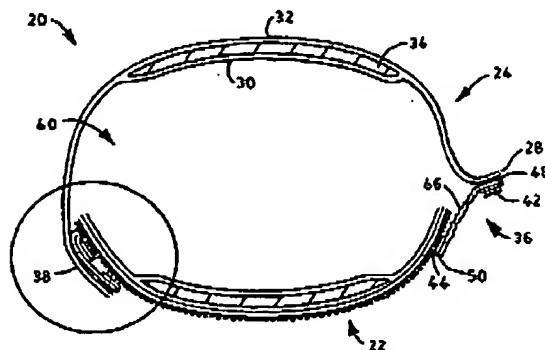


FIG. 2

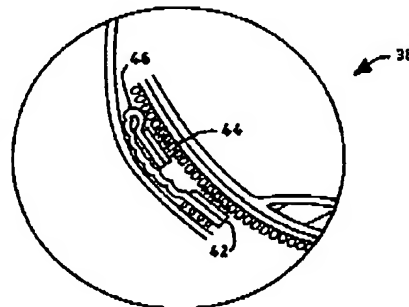


FIG. 3

In the Office Action dated December 19, 2005, the Office asserts that "[t]he stretchable fastening member 46 comprises a fixed position joined to the chassis, as shown in figure 3, having a distal portion provided with a fastening material 44 and a stretchable panel positioned therebetween."

The Office also asserts that "[t]he stretchable fastening member 46 comprises first and second stretchable zones, the second fastening zone being restricted by a restriction means 42, as shown in figure 3."

Applicants respectfully disagree.

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As best understood by Applicants fastening means 36 of Sauer does not include a first stretchable zone and a second stretchable zone.

Applicants submit that according to Sauer "fastening means 36 of Sauer may include an expansion member 46." (See Col 8, lines 15-17)

Applicants note that although Sauer discloses that "the expansion may occur when at least one of the primary fasteners 42 is disengaged from the front portion 22 of the absorbent article while the secondary fasteners 44 remain releasably engaged with the front portion 22 of the absorbent article" (See Col 9, lines 17-21), Sauer does not teach or even remotely suggest that expansion of the fastening means may occur without disengaging the primary fastener.

It is therefore Applicants' position that the fastening means of Sauer '428 does not include a first and a second stretchable zone as presently claimed.

Applicants respectfully remind the Office that Claim 1 includes the features of a first stretchable zone capable of providing extensibility upon an initially applied extension force, and extensibility of the second stretchable zone is restricted by a restriction means until the restriction means is inactivated, and the restriction means is inactivated upon a further applied extension force such that the second stretchable zone provides an additional extensibility to reduce a stress developed in the stretchable panel.

Consequently, it is Applicants' position that Sauer '428 does not teach all the claimed features, Sauer '428 does not anticipate Claims 1, 3, 5 and 7.

Reconsideration and withdrawal of the rejections are therefore respectfully requested.

Rejection Under 35 USC §103(a)

Claims 2 and 6 have been rejected under 35 USC §103(a) as being unpatentable over Sauer '428.

At the outset, Applicants submit that claim 2 depends on claim 1 and claim 6 depends on claim 3, which itself depends on claim 1.

Applicant submits that since the rejections of claims 1 and 3 under 35 U.S.C. § 102(b) were improper, the Office has the burden to make a proper *prima facie* case of

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obviousness for these claims before it can allege that claims 2 and 6 are unpatentable under 35 U.S.C. § 103(a).

Applicants respectfully remind the Office that "[t]o establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation ... to modify the reference or to combine the reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, not in applicant's disclosure." (Emphasis supplied) *In re Vaeck*, 947 F.2d 488, USPQ 2d 1438 (Fed Cir. 1991).

Reconsideration and withdrawal of the rejections are therefore respectfully requested.

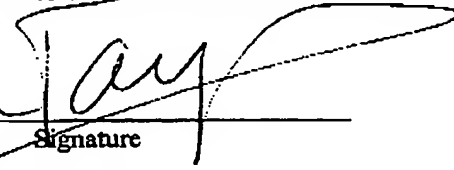
Conclusion

In view of the previous amendments and remarks, it is submitted that all the pending claims are in condition for allowance. Early and favorable action on all claims is therefore requested.

If the next action is other than to allow the claims, the favor of a telephonic interview is requested with the undersigned representative.

Respectfully submitted,

THE PROCTER & GAMBLE COMPANY

By 
Signature

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Date: February 21, 2006
Customer No. 27752